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November 5, 2020

**VIA ECF**

Hon. Brian M. Cogan  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: *Antoinette Moore v. Long Island University; EDNY, 2:20-cv-03843 (Lead Case)*

Dear Judge Cogan:

We represent the Defendant Long Island University (the "LIU") in the above-referenced action. We write to respond to Plaintiff's counsel's letter dated November 4, 2020 (Docket No. 14) respecting a Rule 26(f) conference. For the reasons below, we submit that Plaintiff's concerns about a Rule 26(f) conference should be addressed at the parties' initial conference with the Court scheduled for November 24<sup>th</sup>.

Plaintiff filed her putative class action Complaint in this Action on August 21, 2020 (Docket No. 1). On October 15, 2020, Your Honor granted the Parties' request to consolidate the tuition refund class action cases filed against LIU. Docket No. 11. Your Honor also directed Plaintiffs to file a Consolidated Complaint on or before November 5, 2020. Docket No. 11. The Consolidated Complaint has not yet been filed as of the time of this letter.

Thereafter, on October 29, 2020, LIU advised Plaintiff's counsel that it will likely move to dismiss the consolidated complaint after review of same pursuant to Fed.R.Civ.P. 12. However, Defendant cannot yet move to dismiss an action that has not been filed. Accordingly, we advised Plaintiff's counsel that we viewed a Rule 26(f) conference among the Parties' counsel and a resultant proposed CMP are premature and not necessary, if at all, until a Consolidated Complaint has been filed. We also advised that we would be advising the Court of our position.

We requested Plaintiff's consent to our requesting that the Court adjourn the Rule 26(f) conference and stay discovery in consideration of the procedural posture of this case and the likelihood that LIU would file a motion to dismiss. Obviously, from Plaintiff's letter to the Court he disagreed.

Depending upon the contents of the consolidated complaint, LIU will in all likelihood file a Rule 12 motion to dismiss. If so, LIU will request that the Court stay discovery pending a

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decision on its anticipated motion. We respectfully submit that these issues and scheduling can be discussed and resolved at the parties' upcoming November 24<sup>th</sup> conference with the Court, but in the interim, the parties be relieved of any obligation to file a CMP and the other requirements of the Court's pre-conference October 16, 2020 Order.

Thank you for your consideration.

Respectfully submitted,

BOND, SCHOENECK & KING, PLLC



Gregory B. Reilly

cc:

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